

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

CC Docket No. 96-45
FCC 97-419

Corr Wireless Communications, LLC)

RECEIVED

Petition for Designation as an Eligible
Telecommunications Carrier)

APR 29 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Common Carrier Bureau

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

Corr Wireless Communications, LLC ("Corr Wireless"), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), and the Commission's Public Notice implementing Section 214(e)(6),¹ hereby petitions the Common Carrier Bureau to designate Corr Wireless as eligible telecommunications carrier ("ETC") for certain non-rural service areas in Alabama currently served by BellSouth.²

The Alabama Public Service Commission ("APSC") lacks jurisdiction to consider Corr Wireless's request,³ and therefore the Federal Communications Commission ("FCC") clearly has jurisdiction under Section 214(e)(6) to consider and grant this petition. As demonstrated below,

¹ Public Notice, "Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act," FCC 97-419, 12 FCC Red. 22497 (1997). In the Notice, the Commission delegated authority to the Common Carrier Bureau to designate carriers as ETCs. In accordance with the Notice, a certification that Corr Wireless meets the criteria for ETC status and that it complies with the Anti-Drug Abuse Act is attached to this Petition as Exhibit 1.

² Corr Wireless' service territories are listed on Exhibit 3.

³ See Exhibit 2, Order of the APSC, at page 3, where the APSC ruled that it did not have jurisdiction to grant ETC status to wireless carriers.

Corr Wireless meets all the requirements for ETC designation to serve Alabama customers. Designating Corr Wireless as an ETC will serve the public interest.

I. CORR WIRELESS' UNIVERSAL SERVICE OFFERINGS

Corr Wireless provides cellular telecommunications and personal communications services (collectively referred to as "CMRS" or "wireless") in the service areas of Alabama pictured on the map attached as Exhibit 3. The wireless service territory served by Corr Wireless in accordance with licenses granted by the Federal Communications Commission ("FCC") are Alabama 1 – Franklin, for the cellular market and for the PCS markets, BTA108 (Decatur), BTA158 (Gadsden), BTA198 (Huntsville), and BTA017 (Anniston)⁴

Corr Wireless seeks to be designated as a universal service eligible telecommunications carrier ("ETC") to provide wireless ETC service in its non-rural Alabama wireline service territories (as listed on Exhibit 3 attached hereto).

Corr Wireless seeks ETC designation to expand its telecommunications offerings to consumers within its authorized wireless service areas. Corr Wireless provides all of the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission's rules, throughout its service areas in Alabama. Upon ETC designation, Corr Wireless will make available to consumers a universal service offering over its existing networks infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its customers. Corr Wireless also will provide service to any requesting customer within the designated service areas, and if necessary will deploy any additional facilities necessary to do so.

⁴ This market is not yet in service.

II. CORR WIRELESS SATISFIES ALL THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Corr Wireless satisfies each of the five elements set forth in the Commission's Section 214(e)(6) Procedure Public Notice, as shown below.

A. Corr Wireless is not Subject to the Jurisdiction of the Alabama Public Service Commission ("APSC")

Corr Wireless provides commercial mobile radio service ("CMRS"), and the Commission has previously recognized that a CMRS provider may seek designation as an ETC.⁵ Section 332(c)(3) of the Act precludes rate and entry regulation of CMRS providers by state public utility commissions.⁶ This Commission has jurisdiction, under Section 214(e)(6), to designate CMRS providers as ETCs.

Consistent with the foregoing, the APSC, in an order attached to this Petition as Exhibit 2, recently concluded that wireless carriers are not subject to state jurisdiction in Alabama and therefore must seek ETC designation from the FCC pursuant to Section 214(e)(6).

B. Corr Wireless Offers all of the Services Supported by the Federal High-Cost Universal Service Program

Corr Wireless satisfies the FCC's requirements that an ETC designated pursuant to Section 214(e)(6) "offer, or will be able to offer all of the services designated for support by the

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd. 8776, 8858-59, ¶ 145 (1997) ("Universal Service First Report and Order"); *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 at ¶ 72 (released May 28, 1999).

⁶ 47 U.S.C. § 332(c)(3). State implementation of Section 214(e) is arguably a form of entry regulation (particularly given the overall focus of Section 214 of the Act on authorizing carriers to extend facilities or to provide service). See also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-204, ¶¶ 78, 82 (released September 3, 1999) (suggesting that FCC may designate CMRS providers as ETCs under 47 U.S.C. 214(e)(6) and 332(c)(3)).

Commission.”⁷ As described below, Corr Wireless currently offers each of the supported services described in Section 54.101(a) of the Commission’s rules.⁸ Once designated as an ETC, Corr Wireless will make available a “universal service” offering that includes all of the supported services for consumers in the designated service areas in Alabama.

1. Voice-Grade Access to the Public Switched Network. As an existing CMRS service provider in Alabama, Corr Wireless provides voice-grade access to the public switched network. Through interconnection agreements with ILECs Corr Wireless is able to originate and terminate telephone service for all of its subscribers.
2. Local Usage. Corr Wireless currently offers several service options that include varying amounts of local usage in monthly service plans. Corr Wireless intends to offer its universal service customers a rate plan that includes unlimited local usage. Corr Wireless will satisfy the local usage criterion for ETC designation based upon its offering of unlimited local usage calling plans.
3. Functional Equivalent of Touch-Tone (“DTMF”) Signaling. Corr Wireless currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF

⁷ *Designation of Fort Mojave Telecommunications, Inc., et al., as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd. 4547, 4553, ¶ 11 (CCB 1998) (“Fort Mojave”). A declaration attesting to Corr Wireless’ ability and commitment to offer each of the supported services is attached hereto at Exhibit 1.

⁸ 47 C.F.R. § 54.101(a).

signaling. Corr Wireless therefore meets the requirement to provide DTMF signaling or its functional equivalent.⁹

4. Single Party Service. Corr Wireless meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.¹⁰
5. Access to Emergency Service. Corr Wireless currently offers access to emergency service throughout its cellular service area by dialing 911. Enhanced 911 (“E911”), which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is required only if a public emergency service provider makes arrangements for the delivery of such information.¹¹ Corr Wireless has completed Phase I E911 implementation in all jurisdictions that have requested it. Three public emergency service providers in Corr Wireless’s service territory have requested Phase II compliance. Corr Wireless currently has a Phase II waiver request pending with the FCC. The Commission has already held that wireless providers may be designated as ETCs despite the current unavailability of E911.¹² Therefore, Corr Wireless meets the requirement to provide access to emergency service.

⁹ *Universal Service First Report and Order*, 12 FCC Rcd. at 8815, ¶ 71 (1997).

¹⁰ *Id.* at 8810, ¶ 62.

¹¹ *Id.* at 8826-27, ¶ 90.

¹² *Id.*

6. Access to Operator Services. Corr Wireless offers its subscribers access to operator services and will make such services available throughout its designated service area.
7. Access to Interexchange Service. Corr Wireless presently meets this requirement to provide all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with an interexchange carrier ("IXC").
8. Access to Directory Assistance. Corr Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212."
9. Toll Limitation for Qualifying Low-Income Customers. Once designated an ETC, Corr Wireless will participate in Lifeline as required, and will offer toll blocking in satisfaction of the FCC's requirement. Today, the Company provides toll blocking services for international calls and customer selected toll calls. Corr Wireless will utilize the same toll blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

C. Corr Wireless Provides the Supported Services Using its Own Facilities

Corr Wireless provides the supported services under Section 214(e)(1)(A) of the Act and Section 54.101(a) of the Commission's rules using Corr Wireless's existing network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network.

D. Corr Wireless Will Advertise its Universal Service Offering

Corr Wireless will advertise the availability of its universal service offering, and the charges therefor, using media of general distribution. Currently, Corr Wireless employs several advertising mediums to promote its service offerings, including television, radio, newspaper, and billboard advertising, as well as special targeted advertising. Corr Wireless will expand upon these media, as necessary, to insure that consumers within its designated service area are fully informed of its universal service offering. Moreover, given the fact that ETCs receive universal service support only to the extent they serve customers, and given the investments Corr Wireless plans to make to enhance its network to fully serve the universal service needs of consumers in Alabama, Corr Wireless will have strong economic incentives, reinforcing its statutory obligations, to vigorously promote its universal service offering in Alabama.

E. Designating Corr Wireless as an ETC Will Advance the Public Interest

Corr Wireless requests designation for non-rural Alabama service areas described in Exhibit 3 to this application. The designation of Corr Wireless as ETC clearly is in the public interest.¹³ Designating Corr Wireless as an ETC will promote competition in the provision of universal services to the benefit of consumers in Alabama.¹⁴ In addition, designating Corr Wireless as an ETC will advance universal service by bringing consumers in Alabama new telecommunications services, including wireless local loop service.

¹³ 47 U.S.C. § 214(e)(2). Under Section 214(e)(6), the Commission stands in the place of a state commission for this purpose.

¹⁴ See *Universal Service First Report and Order*, 12 FCC Rcd. at 8781, ¶ 4 (quoting Joint Explanatory Statement recital that goal of 1996 Act is to establish “a pro-competitive . . . framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening *all* telecommunications markets to competition”) (emphasis added).

III. ANTI-DRUG ABUSE CERTIFICATION

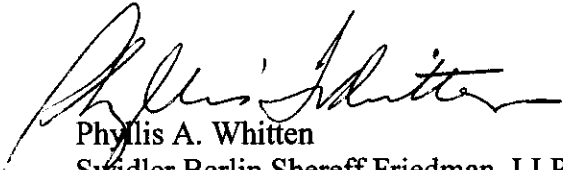
Corr Wireless certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.¹⁵

IV. CONCLUSION

For the foregoing reasons Corr Wireless respectfully requests ETC designation for the requested service territories in Alabama.

Respectfully Submitted,

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP



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Phone: (205) 237-3000

Date: April 29, 2002

¹⁵ 21 U.S.C. § 862. See attached Certification in the Declaration of Tom Buchanan at Exhibit 1.

CERTIFICATE OF SERVICE

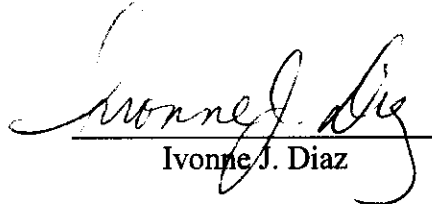
I, Ivonne J. Diaz, hereby certify that on this 29th day of April 2002, copies of the foregoing Petition for Designation as an Eligible Telecommunications Carrier were hand delivered to those parties marked with an asterisk. All others were served by First Class mail.

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Suite 850
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Ivonne J. Diaz

EXHIBITS

Exhibit 1

Declaration of Tom Buchanan

Exhibit 2

Order of the Alabama Public Service Commission

Exhibit 3

Map of Corr Wireless Service Territory and List of Service Territories Requested

Exhibit 1

Declaration of Tom Buchanan

I, Tom Buchanan, do hereby declare under penalty of perjury as follows:

1. I am General Counsel of Corr Wireless Communications, LLC ("Corr Wireless").
2. This Declaration is submitted in support of Corr Wireless' Petition for Designation as an Eligible Telecommunications Carrier to serve Alabama.
3. I declare and certify as follows, and as described in the aforementioned petition, that: Corr Wireless is not subject to the jurisdiction of a state commission; Corr Wireless offers, or will offer, all of the services designated by the Commission for support pursuant to Section 254(c)(3) of the Act; Corr Wireless offers, or will offer, the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; and Corr Wireless advertises, or will advertise, the availability of supported services and the charges therefor using media of general distribution as described in the Advertising Plan attached to the aforementioned Petition.
4. I declare that to the best of my knowledge, Corr Wireless, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of Corr Wireless as specified in Section 1.2002(b) of the Commission's rules are not subject to a denial of federal benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.
5. I further declare that I have reviewed the aforementioned Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Tom Buchanan
General Counsel

Date: April 29, 2002

Exhibit 2

Order of the Alabama Public Service Commission



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

**PINE BELT CELLULAR, INC. and PINE
BELT PCS, INC.,**

Joint Petitioners

**PETITION: For ETC status and/or
clarification regarding the jurisdiction
of the Commission to grant ETC status
to wireless carriers.**

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

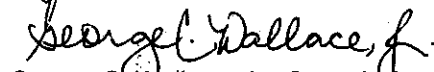
IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


George C. Wallace, Jr., Commissioner

ATTEST: A True Copy


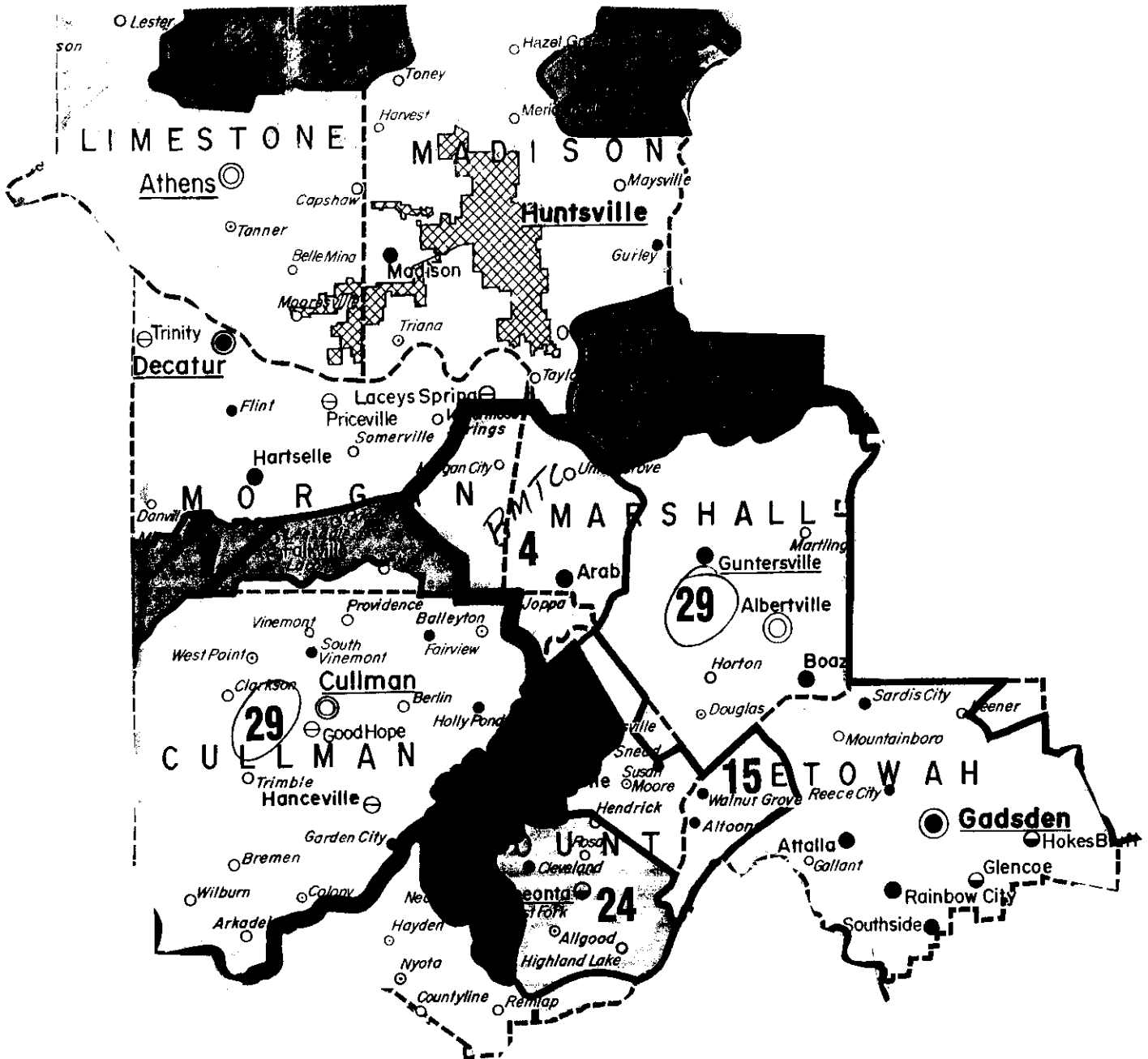

Walter L. Thomas, Jr., Secretary

Exhibit 3

**Map of Corr Wireless Service Territory
and
List of Service Territories Requested**

Service Territory Map



Service Territories Requested

Corr Wireless requests ETC authority for its service territories located within the following BellSouth service territories in Alabama:

- Blount County
- Cullman County
- Etowah County
- Limestone County
- Madison County
- Marshall County
- Morgan County